IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1547 of 2006

Date of Decision: 3-02-2006

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UNION OF INDIA & 2 - Petitioner(s)
Versus
DHANIBEN R PARMAR - Respondent(s)
(For full cause title, see next page)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari,Judge

Whether approved for reporting? Yes

For the Petitioners:

MR NS SHEVADE,Advocate.

For the respondent:

MR PK HANDA, Advocate

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(Per:THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI (ORAL)

1. This writ petition has been filed by the petitioners - Union of India, through General Manager, Western Railway, Mumbai and others being

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Whether reporters of Local Papers may be allowed

to see the Judgment? Yes

aggrieved by order dated 12.4.2005 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (herein-after referred to as "CAT") in O.A.No.274/2002 (Smt.Dhaniben R.Parmar Vs.Union of India and others). Vide impugned order dated 12.4.2005 the CAT has set aside the memorandum dated 22.7.2003 passed by the petitioners withdrawing the benefit of grant of compassionate allowance to the respondent, sanctioned vide memorandum dated 19.6.2000. Further, the petitioners have been directed to pay the amount of compassionate allowance in terms of their order dated 19.6.2000 within four months of the receipt of the order of CAT failing which they will be liable to pay interest at the rate of 9% per annum from the expiry of the period till payment. The CAT has further held that the respondent is entitled to the grant of family pension in accordance with the Rules. Hence this

petition.

2. To appreciate the controversy in question a brief summary of the facts leading to the passing of order dated 12.4.2005 of CAT will be necessary. The respondent is the widow of Shri Ramanbhai P Parmar, who was employed with the petitioner as Pointsman under SS BRCY. The deceased husband of the respondent faced departmental proceedings vide charge-sheet dated 6.6.1990. A preliminary inquiry was conducted by the Inquiry Officer on 10.11.1991. The Inquiry Officer submitted his report and vide order dated 4.2.1993 the disciplinary authority removed Shri Ramanbhai P.Parmar from service. On 25.1.1999 Shri Ramanbhai P.Parmar expired.

3. After his death, the respondent filed O.A.No.152/2000 stating therein that her husband had not filed any appeal or revision against the penalty of removal imposed upon him, since he had

remained hospitalised. She made a prayer for grant of compassionate allowance as per Para 309 and 310 of the Manual of Railway Pension Rules, 1950 (hereinafter referred to as "MRPR, 1950"), read with Circular dated 8.4.1992. After hearing both the parties, the CAT directed that the OA be treated as a representation by the widow of the deceased employee for seeking compassionate allowance in terms of Circular dated 8.4.1992 and paras 309 and 310 of MRPR,1950 of Pension Rules. The petitioners were directed to consider the representation and communicate the decision to the widow within three months from the date of the receipt of the copy of the order. The respondent was given the liberty to file a fresh O.A., in case she was aggrieved by the order passed by the petitioners on the said representation.

4. Pursuant to the above order of the CAT, the petitioners issued memorandum dated 19.6.2000

sanctioning compassionate allowance to the extent of 50% of ordinary pension to the respondent. This order is annexed as Annexure "B" to the present writ petition and its relevant extract is reproduced herein-below:

> "On the basis of Hon.CAT-ADI's judgment dtd. 5-4-2000 passed in O.A.No.152/2000, the disciplinary authority has accorded sanction for payment of allowances corresponding to ordinary pension only to the extent of 50% to Smt.Dhaniben Ramanbhai Parmar, widow of Shri Ramanbhai Punjabhai Ex.P/man, URN who was removed from Railway Service w.e.f. 4-2-93 AN vide this office NIP of even Number dtd. 4-2-93, in terms of para 309 and 310 of MRPR1950. Shri Ramanbhai Punjabhai, Ex.-P/man has been expired on 25-1-99."

5. Having passed the order dated 19.6.2000, the petitioners chose not to implement the same for reasons best known to them. The respondent was driven into filing O.A.No.274/2002 which was disposed of vide order dated 17.5.2002 with the direction to the petitioners to release the necessary payment,if not already paid, within a period of two months from the date of the receipt of the copy of the order. The order dated 17.5.2002 of CAT was also not implemented by the

petitioners and the respondent filed Contempt Petition No.71/2002. In the reply dated 6.2.2003 to the said Contempt Petition, sworn by DRM(E) it was stated that in case the respondent succeeds in establishing her identity as the rightful claimant to compassionate allowance, there will not be any undue delay in making the payment of the same. The Contempt Petition was dropped as the High Court quashed the order dated 17.6.2002 in the O.A. The petitioners filed a Review Application No.66/2003 in O.A.No.274/2002 which was rejected by the CAT on account of delay. Thereafter, Special Civil Application No.5145/2004 was filed by the petitioners before the High Court, which was allowed and the matter was remitted back to the Tribunal for a fresh decision in accordance with law, after giving notice to both the parties.

6. In the meanwhile the petitioners passed order dated 22.7.2003 whereby the memorandum dated

19.6.2000 sanctioning the grant of compassionate allowance to the respondent was cancelled. The order dated 22.7.2003 was challenged by the respondent in O.A.No.274/2004. It is relevant to note that the petitioners did not care to implement the order dated 19.6.2000 for three years until the said order was cancelled vide order dated 22.7.2003, annexed as Annexure "C", the relevant extract of which is reproduced hereinbelow:

"In order to comply with the interim directions of the Hon'ble CAT after verification of affidavit filed by the applicant Smt.Dhaniben Ramanbhai P, the case was sent to the associated finance for releasing compassionate allowance given vide order referred to above. The associated finance who are the custodian of Railway Finance (Government Exchequer) has however pointed out that the release of the said payment is not covered by the cannons of financial propriety as the orders passed on 19.6.00 suffered from the following vices:-

1.The orders passed are not in conformity with the directions given by the Hon'ble CAT-ADI in O.A.No.152/2000 in as much as the Hon'ble CAT has given directions to pass orders in terms of para 309 & 310 of MRPR and Circular dated 8.4.92. Para 310 of MRPR stipulates that "where it can be legitimately inferred that the

Railway servant's service has been dishonest there can seldom be any good case for grant of compassionate allowance." The case of Shri Ramanbhai P. being a proven case of dishonesty, the orders passed by the DA is in contravention with the directions of the Hon'ble CAT.

2. The compassionate allowance is to be granted in favour of removed or deceased Railway servants and not in favour of their widows.

3. The competent authority who had passed the orders of removal from service did not pass any orders for grant of compassionate allowance at the relevant time alongwith the orders of removal or within two months thereafter. The ex-employee also did not came up with any such request during his life time.

4. Thereafter, the Law Officer of the Railway has opined that the Administration reserves the right to rectify the mistake committed and that the mistake has been rightly detected by the Accounts Branch with further directions that the case should be looked into by the next higher authority accordingly.

The case was submitted to the next higher authority, who has decided to cancel the earlier orders for reasons indicated above. Accordingly, the orders issued vide memorandum referred to above is hereby treated as cancelled."

7. A combined reading of order dated 19.6.2000 and 22.7.2003 goes to show that both of these orders are based upon the application of the provisions of Para 309 and 310 of MRPR, 1950. At this stage, it will be relevant to take note of the relevant provisions of MRPR, 1950. Chapter

III of the MRPR, 1950 deals with pensionary benefits of Railway employees. Para 307 under Chapter III reads as under:

"307. Compassionate grants/allowances referred to in Para 309 are of the nature of ex-gratia payments, but are in reality forms of pensionary benefits. In general, therefore, the rules and procedure applicable to pensionary benefits apply mutatis mutandis, to the corresponding compassionate grants/allowances."

Para 309 and 310 deals with the admissibility of pensionary benefits to railway servants on whom the penalty of removal or dismissal from service has been imposed and are reproduced hereinbelow:

"309. Removal or dismissal from service.- No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant(s)- corresponding to ordinary gratuity and/or death-cum-retirement gratuity-, and/or allowances - corresponding to ordinary pension-, when he is deserving of special consideration; provided that the compassionate grant(s) and/or allowance awarded to such a Railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had

retired on medical certificate.

310. Para 309 vests the officer removing or dismissing the Railway servant from service with an absolute discretion to grant or not to award any compassionate grant(s) and/or allowances, the only restriction being that, if awarded, it shall not exceed the maximum of two-thirds of the pensionary benefits that would be admissible to the Railway servant concerned on retirement on invalid gratuity/pension. Each case has to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the grounds on which the Railway servant was removed or dismissed, but also the kind of service he has rendered. Where it can be legitimately inferred that the Railway servant's service has been dishonest there can seldom be any good case for award of compassionate grant(s) and/or allowances. Poverty is not an essential condition precedent to the award of compassionate grant(s) and/or allowances, but special regard is also occasionally paid to the fact that the Railway servant has a wife and children dependent upon him, though this factor by itself is not, except,perhaps, in the most exceptional circumstances sufficient for the grant of compassionate grant(s) and/or allowances."

8. As already stated hereinabove, the husband of the respondent had been removed from service after conducting a preliminary inquiry. The

Article of Charge against the husband of the respondent was relating to gross misconduct. The reply of deceased Railway servant to this charge is as under:-

"That I have admitted Shri Shushilaben in Railway hospital on 7/1/90 as my wife. This I have accepted in my statements given to V.I.BRC 31/1/90. This was not done with any malafide intention but she was my neighbour and nobody was these. She was also very poor and was staying in Zopadpatti where I was also staying in Zopadpatti. This was just humanitarian reason I took her in early morning as she was having severe Labour Pains and no doctor near by vicinity and more over problem of money. So (illegible) act I did no doubt it was wrong. But no alternative so I gave wrong information and shown her my wife. But I did not (illegible) I would have given her my wifes name but I did not (illegible). For that sake also I have obtained memo showing her name (illegible). Where as on records my wife's name is Dhanuben. So (illegible) no bad intention at all as I have not even change the (illegible) I could have easily done. This is clear proof of my intention to help her. Because we both face the same financial difficulty. So I request your honour to consider this with sympathetic view and I am ready to pay the charges due to me on this account. I have also requested EO(T.I.BRC) not to hold inquiry as I do not want inquiry and will submit my defence in writing.

I am an illiterate employee and not knowing very much about the consequence of my deed which was just out of money and to help her. This is what I have to state and urge your honour to consider my appeal in proper perspective. I hope your honour will show lenient view."

9. After considering the entire material on record, the CAT came to the conclusion that the order dated 22.7.2003 was bad in law as it had been passed without giving an opportunity of hearing to the respondent and that para 309 and 310 of the MRPR, 1950 have not been properly interpreted and applied by the petitioners in the present case.

10. We have heard Shri NS Shevade, learned counsel for the petitioners and Shri P.K.Handa for the respondent and have gone though the entire material on record. Shri N.S.Shevade has contended that the petitioners were very well within their right in passing order dated 22.7.2003 cancelling the grant of compassionate allowance to the respondent since any administrative action can always be reviewed by the higher authorities at any point of time and the mistake can be rectified. He further

contended that the memorandum dated 19.6.2000 was not in consonance with Para 309 and 310 of MRPR, 1950, inasmuch as the case of Shri Ramanbhai P.Parmar, husband of the respondent, was a proven case of dishonesty and therefore, the compassionate allowance was not admissible to him. It has further been contended that the compassionate allowance is to be granted in favour of the removed or deceased railway employee and not in favour of his widow. Moreover, the deceased employee did not apply for grant of such compassionate allowance during his life time. On the other hand, Shri P.K.Handa,learned counsel for the respodent,has argued that the order dt.12.4.2005 passed by CAT deserves to be upheld.

11. It is clear from the perusal of memorandum dated 19.6.2000 issued by DRM(E) to the effect that the compassionate allowance corresponding the original pension to the extent of 50% was

sanctioned to the respondent in terms of para 309 and 310 of MRPR,1950, that on the date of issuing of this memorandum, the competent authority was very well aware that Shri Ramanbhai P.Parmar had expired on 25.1.99 as this fact has also been noted in the said memorandum. This memorandum has been issued pursuant to the direction of the Tribunal whereby the O.A.filed by the respondent was directed to be treated as a representation and the petitioners were directed to consider the grant of compassionate allowance to the respondent. Since the direction was only to consider the grant of compassionate allowance, it is presumed that the petitioners had applied their minds and after taking into consideration para 309 and 310 had sanctioned the grant of compassionate allowance to the respondent vide memorandum dated 19.6.2000. Had the petitioners felt that the grant of compassionate allowance was not admissible in terms of para 309 and 310 of MRPR, 1950 it was open to them to have

declined the same. Inspite of having sanctioned the compassionate allowance, no amount was paid to the respondent for three years, after which period, the memorandum dated 22.7.2003 was issued, cancelling the earlier memorandum dated 19.6.2000. It is interesting to note that the later memorandum dated 22.7.2003 is also passed by the same authority i.e. DRM(E)BRC, which passed memorandum dt.19.6.2000. The main reason stated for cancellation of the grant of compassionate allowance is that the order passed vide earlier memorandum dated 19.6.2000 was not in consonance with paras 309 and 310 of MRPR,1950.

12. A combined reading of Para 309 and 310 reproduced hereinabove shows that although the grant of compassionate allowance to the railway servant, on whom the penalty of removal or dismissal from service is imposed, is purely within the discretion of the officer removing or

dismissing such railway servant, each case has to be considered on its own merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed unduly harsh on the individual, although it may have been necessary in the interest of the Government. In considering this question,it is not only the ground on which the railway servant has been removed or dismissed which has to be taken into account but the entire service rendered by him in the past also has to be considered. In cases where the railway servant's entire service has been proved to be dishonest then the discretion of granting the compassionate allowance can be exercised against such employee. However, this has to be legitimately inferred from the entire service rendered by the removed railway servant and such a conclusion cannot be drawn merely on the sole ground which resulted in the dismissal or removal of the said railway employee. In the

memorandum dated 22.7.2003 cancelling the grant of compassionate allowance, reliance has been placed only on one portion of para 310 which has been quoted out of contest. This reads "where it can be legitimately inferred that the Railway servant's service has been dishonest there can seldom be any good case for grant of compassionate allowance." The lines preceding this portion in para 310 i.e. "Each case has to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the grounds on which the Railway servant was removed or dismissed, but also the kind of service he has rendered," has conveniently been excluded. In Memorandum dated 22.7.2003 the petitioners have

sought to justify this action of depriving the respondent of the compassionate allowance already granted by quoting only that portion of para 310, out of context, which suits their purpose and have failed to take into consideration or apply the provisions of the entire para 310 in its correct perspective. Nowhere have the petitioners stated that the services rendered by the deceased husband of the respondent have been dishonest, apart from the ground on which he was removed from service.

13. Even if the Article of Charge against the deceased Shri Ramanbhai P.Parmar, on which he was removed is seen, and his explanation, which has been reproduced hereinabove is perused, it is very clear that the misconduct with which he was charged is not of such a nature so as to render his entire service liable to be termed as 'dishonest'. His explanation is that he admitted his neighbour, who was having severe labour pains

and who had no money, in the hospital by giving the wrong information that she was his wife, although he did not use the actual name of his wife but gave the lady's actual name at the time of admission in the hospital. This was done by him not with any bad intention but only to help the lady in her difficult situation and on humanitarian grounds. Be that as it may, the deceased railway servant was removed from service and during his life time, he never challenged this action of the petitioners. The ground on which the husband of the respondent was removed, although amounts to violation of rules, cannot be termed as 'dishonest'. The intention behind his action was only to help a poor lady in distress and not to gain any unfair pecuniary advantage for himself at the cost of his employer. Neither is this a case involving moral turpitude on the part of the deceased. In any case, the petitioners were bound to assess the entire service of the deceased employee before coming to

a conclusion that his service has been dishonest in terms of para 310 MRPR 1950,and which the petitioners have failed to do while issuing memorandum dated 22.7.2003. On the very face of it, the petitioners have failed to apply the provisions of para 309 and 310 of MRPR,1950 in the correct perspective and the reason given by the petitioners that the case of Shri Ramanbhai P.Parmar is a proven case of dishonesty, is not based upon any independent or objective assessment of his entire service. The conclusion arrived at by the petitioners is also not founded upon any factually proved material on record.

14. A reading of para 307 reproduced hereinabove clearly shows that the grant of compassionate allowance referred to in para 309 is in the nature of ex gratia payment but in reality, it is a pensionary benefit. Therefore, the procedure applicable to pensionary benefits will apply mutatis mutandis to the grant of compassionate

allowance. Keeping this provision in mind, the second reason stated in Memorandum dated 22.7.2003 that the compassionate allowance is to be granted in favour of the removed or deceased employee and not in favour of the widow is totally untenable. It is a well settled principle of law that the pension is a right and not a bounty. This position has been expounded by the Supreme Court in AIR 1983 SC 130 (D.S.Nakara v. Union of India). The relevant portion of which is quoted herein-below:-

"31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch."

15. The petitioners do not dispute that the

compassionate allowance, which in term of para 307 is in reality a form of pensionary benefit, could have been admissible to the removed or deceased railway servant. While sanctioning the compassionate allowance vide memorandum dated 19.6.2000 it was very much in the knowledge of the petitioners that Shri Ramanbhai P.Parmar had expired on 25.1.1999. Inspite of this, the compassionate allowance was sanctioned in favour of his widow. When the petitioners had taken the factum of death of Shri Ramanbhai P.Parmar into consideration and inspite of this had sanctioned the compassionate allowance in favour of the respondent, then they cannot later on take a somersault and cancel the said allowance for the same reason i.e. the death of the removed Government employee. The objection taken by the petitioners in memorandum dated 22.7.2003 that compassionate allowance is to be granted in favour of the removed or deceased railway servant and not in favour of his widow could have been

taken by it at the first instance. But it was not so taken. Meaning thereby, that this is an after-thought on the part of the petitioners, in order to deprive the respondent of the benefit of compassionate allowance already sanctioned in her favour.

16. The compassionate allowance is a financial benefit which would have accrued month after month to the deceased railway employee had it been granted to him in the first place. Had the railway employee died after the sanction of such an allowance, the same would have been continued to be paid to his widow-the respondent herein. Once the widow has been held entitled by the petitioners for such grant to the tune of 50% vide memorandum dated 19.6.2000, they cannot now be heard to say that it is not so admissible to the respondent, after a lapse of three years. The respondent being the legal heir of the deceased employee, would have been entitled to receive

the compassionate allowance after the death of her husband, had the same been allowed to him. Since the petitioner had though fit to sanction this allowance to the respondent in her own right vide memorandum dt.9.6.2000, this belated objection raised by them is totally unwarranted and arbitrary. The respondent has acquired a vested right to receive the compassionate allowance in terms of memorandum dt. 19.6.2000.

17. Another ground for cancelling the compassionate allowance stated in memorandum dated 22.7.2003 is that during his life time the deceased employee did not request for grant of compassionate allowance. This fact by itself can not deprive the widow of the deceased railway employee from making a prayer for grant of this benefit, which prayer was granted by the petitioners themselves, after due consideration of the entire case, before it was arbitrarily withdrawn.

18. The petitioners have contended that they are well within their rights to rectify the mistake and review memorandum dated 19.6.2000, which is an administrative order. In this regard it has to be kept in mind that memorandum dated 19.6.2000 is not an innocuous administrative order, but is an order which gives financial benefits to the respondent, thereby creating a vested right. No order which creates a right or an obligation can be unilaterally cancelled or withdrawn behind the back of the person in whose favour the right is created, without being given an opportunity of being heard. An order withdrawing financial benefits already given, such as memorandum dated 22.7.2003 entails serious civil consequences and since it has been issued without giving any notice to the respondent and without giving her an opportunity of being heard, it is arbitrary and clearly in violation of the well enshrined principles of natural justice. Before passing an

order which is detrimental to a person, the competent authority is bound to give the party who will be adversely affected, an opportunity of being heard.

19. What are the aims of the rules of natural justice, has been enunciated in the Constitution Bench judgment of the Supreme Court in AIR 1970 SC 150 (A.K.Kraipak v. Union of India) wherein it has been observed as under:

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules,namely (1)no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith,without bias and not arbitrarily or unreasonably."

20. In the present case the petitioners have violated the rule of Audi Alteram Partem and,

under the garb of rectification of a mistake by reviewing an administrative order, have acted arbitrarily and unjustly, and therefore, this action of withdrawing the benefit of compassionate allowance to the respondent is vitiated and is bad in law. It is not a clerical error that is being rectified, but a vested right which has accrued to the respondent by virtue of the petitioners own action is being withdrawn in a wholly illegal and unjustified manner. An administrative decision must satisfy the test of legality and rationality and should not suffer from the vice of arbitrariness in order to pass the test of equality enshrined in Article 14 of the Constitution of India. Every action or decision of an authority whether legislative, administrative or quasi judicial in nature, and every exercise of power leading to such decision, has to be tested on the touchstone of Article 14.

21. In (2001)1 SCC 182 (Kumaon Mandal Vikas Nigam

Ltd. v. Girja Shankar Pant and others) the Supreme Court has further further elaborated on the principles of natural justice as under:

"Since the decision of this Court in Kraipak case (A.K.Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of Keshav Mills C.Ltd. v. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p.387,para 8)

"8.The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer.We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his

case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K.(an infant), In re. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as 'insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances". However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. Observed in Russel v. Duke of Norfolk:

"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "

2.While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental

action."

(emphasis supplied)

22. It is evident from the record that the petitioners have unilaterally withdrawn the benefit of compassionate allowance sanctioned by them in a most unfair and arbitrary manner without giving any prior notice to the respondent or affording her an opportunity of hearing. For the reasons stated hereinabove and in the light of the law laid down by the Supreme Court, we are of the considered view that the impugned action of the petitioners cannot be sustained and is clearly bad in law. The impugned order dt.12-4-2005 passed by CAT calls for no interfrence by this Court.

23. As a result, the writ petition is dismissed as being devoid of any merit.

(Bhawani Singh)
Chief Justice

(Smt.Abhilasha Kumari)
Judge

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